

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)
) Administrative Order on Consent
Windy Ridge Dairy, LLC) Under Section 309(a) of the Clean Water
) Act, 33 U.S.C. § 1319(a)
and)
)
T&M Limited Partnership)
)
Respondents.)

I. INTRODUCTION

1. The U.S. Environmental Protection Agency ("EPA") makes the findings of fact set forth below (Section IV) and is issuing this Administrative Order on Consent ("Order on Consent" or "Order") to Windy Ridge Dairy, LLC and T&M Limited Partnership ("Respondents") under the authority of Section 309(a) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(a). The Administrator of EPA has delegated the authority to issue such orders to the Regional Administrator of EPA Region 5, who has redelegated this authority to the Director of the Water Division, EPA, Region 5.
2. This Order is mutually entered into by EPA and Respondents.
3. At all times relevant to this Order, Respondents have together owned and operated the Windy Ridge Dairy facility, located at 1652 North County Road 1100 West, Fair Oaks, Indiana 47943 (the "Facility").
4. EPA alleges that Respondents violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging a pollutant or pollutants into the navigable waters from a point source without a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.
5. By entering into this Order, Respondents: (1) consent to EPA's authority to issue this Order; (2) neither admit nor deny the factual allegations set forth in this Order; (3) agree to undertake all actions required by the terms and conditions of this Order; and (4) agree not to contest the authority of EPA to issue this Order or the validity of any terms or conditions in this Order.
6. For the purposes of this Order only, Respondents waive any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondents may have with respect to any issue of fact or law set forth in this Order on Consent,

including, but not limited to, any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

II. STATUTORY AUTHORITY

7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except, *inter alia*, in compliance with an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
8. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), provides that whenever EPA finds that any person is in violation of requirements of, *inter alia*, Section 301 of the CWA, 33 U.S.C. § 1311, or is in violation of any condition or limitation that implements those sections in an NPDES permit, EPA shall issue an order requiring such person to comply with such requirements, conditions, or limitations. Section 309(a)(5) of the CWA, 33 U.S.C. § 1319(a)(5), requires that any such order shall specify a time for compliance that EPA determines to be reasonable taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

III. DEFINITIONS

9. All terms used, but not defined, in this Order have the meanings provided to them in the CWA, 33 U.S.C. § 1251 *et seq.*, and the effective EPA regulations promulgated under the CWA.
10. "Act" or "CWA" means the Clean Water Act, 33 U.S.C. § 1251 *et seq.*
11. "Animal Feeding Operation" or "AFO" means, among other things, a lot or facility where:
 - a. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period and,
 - b. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. 40 C.F.R. § 122.23(b)(1).
12. "Concentrated Animal Feeding Operation" or "CAFO" means an AFO that is defined as, *inter alia*, a Large CAFO. 40 C.F.R. § 122.23(b)(2).
13. "Day" or "days" means a calendar day or calendar days unless expressly stated to be a business day. When computing any period of time under this Order, should the last day fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.
14. "Discharge of a pollutant," as defined in Section 502(12) of the CWA, means *inter alia*, "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12).

15. "Effective Date" has the definition provided in Section VIII of this Order.
16. "EPA" means the United States Environmental Protection Agency.
17. "Facility" has the definition provided in Paragraph 3 of this Order.
18. "IDEM" means the Indiana Department of Environmental Management and any successor departments, agencies, or instrumentalities of the State.
19. "Land Application Area" means land under the control of either or both of the Respondents, whether that land is owned, rented, or leased, to which manure or process wastewater is or may be applied. 40 C.F.R. § 122.23(b)(3). The Land Application Area comprises fields A2/A3, A4, A5, A6, A9, A10, A11, Calumet, 101, 102, 103, and 104, which are identified in the NMP.
20. "Large CAFO" means, among other things, an animal feeding operation that stables or confines more than 700 mature dairy cows, whether milked or dry. 40 C.F.R. § 122.23(b)(4).
21. "Navigable waters," as defined in Section 502(7) of the CWA, means "the waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).
22. "Order on Consent" and "Order" means this document, all attachments hereto, and all subsequent modifications thereto, including incorporated submissions from Respondents, as described in Section VI.
23. "Paragraph" means a portion of this Order identified by an Arabic numeral.
24. "Parties" means the EPA and Respondents.
25. "Person," as defined in Section 502(5) of the CWA, means an "individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body." 33 U.S.C. § 1362(5).
26. "Point source," as defined in Section 502(14) of the CWA, means "any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch channel, tunnel, conduit, . . . concentrated animal feeding operation . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).
27. "Pollutant," as defined in Section 502(6) of the CWA, means "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6).

28. "Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities. 40 C.F.R. § 122.23(b)(8).
29. "Respondents" means Windy Ridge Dairy, LLC and T&M Limited Partnership.
30. "State" means the State of Indiana.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

31. Respondent Windy Ridge Dairy, LLC is a corporation, so it is a "person," as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
32. Respondent T&M Limited Partnership is a partnership, so it is a "person," as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
33. At all times relevant to this Order, Respondents together owned and operated the Facility. The Facility is a Production Area for a dairy. Windy Ridge Dairy, LLC operates the Facility and owns the mobile equipment required to operate the Facility. T&M Limited Partnership owns Facility, including the land and associated buildings and the fixed equipment required for operation of the Facility. T&M also owns the Land Application Area.
34. The Facility is an Animal Feeding Operation because:
- a. it is a lot or facility where animals have been, are or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, within the meaning of 40 C.F.R. § 122.23(b)(1)(i); and
 - b. crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility, within the meaning of 40 C.F.R. § 122.23(b)(1)(ii).
35. The Facility is a CAFO and a Large CAFO because the production area stables or confines greater than 700 mature dairy cows.

36. The Land Application Area drains to surface drainage structures and subsurface drainage pipes, which connect to outfalls that discharge to roadside ditches and tributaries that flow to the Iroquois River.
37. Pursuant to 40 C.F.R. § 122.23(d), a CAFO must not discharge unless the discharge is authorized by an NPDES permit.
38. At all relevant times, the Facility has not been covered by an NPDES permit.
39. Pursuant to 40 C.F.R. § 122.23(e), a land application discharge is a point source discharge subject to the NPDES permit requirements, except where it is an agricultural stormwater discharge.
40. Pursuant to 40 C.F.R. § 122.23(e)(1), for unpermitted Large CAFOs, a precipitation-related discharge of manure or process wastewater from land application areas under its control is considered an agricultural stormwater discharge only where the manure or process wastewater has been land-applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients, as specified in 40 C.F.R. § 122.42(e)(1)(vi) through (ix).
41. On October 31, 2013, June 11, 2014, and July 26-27, 2017, personnel from EPA conducted inspections at the Facility ("2013 Inspection", "2014 Inspection", and "2017 Inspection", respectively). The 2014 Inspection report is included as Attachment 1.
42. On March 27, 2015, EPA issued Information Request V-W-15-308-20 to Windy Ridge Dairy, LLC. On August 5, 2015, EPA issued Information Request V-W-15-308-23 to T&M Limited Partnership. EPA requested and Respondents provided information on the application of manure and process wastewater to the land application areas under the control of the owner and operator of the CAFO. Respondents also submitted reports to EPA describing the nutrient management practices employed during 2015, 2016, and 2017 that included information about the application of manure and process wastewater to the Land Application Area.
43. Based on their responses to EPA's information requests, Respondents did not have a nutrient management plan which contained the elements required by 40 C.F.R. § 122.42(e)(1)(vi) – (ix) for the land application of manure or process wastewater at the Land Application Area at the time of the 2014 Inspection. Since that time, Respondents have developed a nutrient management plan that is satisfactory to EPA.
44. At the time of the 2014 Inspection, Respondents caused manure or process wastewater to be applied to the Land Application Area in ways that did not ensure appropriate agricultural utilization of the nutrients in the manure or process wastewater.
45. During the 2014 Inspection, EPA personnel observed runoff from the Land Application Area at several locations, which flowed through surface drainage structures and subsurface

drainage pipes, discharging from outfalls to roadside ditches and tributaries that flowed to the Iroquois River.

46. During the 2014 Inspection, EPA personnel sampled runoff being discharged from the Land Application Area at several locations, for pollutants found in manure, including Fecal Coliform, Biochemical Oxygen Demand (BOD), Total Kjeldahl Nitrogen (TKN), Nitrate-Nitrite Nitrogen, Ammonia Nitrogen, Total Phosphorus, Total Dissolved Solids (TDS), and Total Suspended Solids (TSS).
47. The sample results from the 2014 Inspection showed that all samples of the runoff described in Paragraphs 45 and 46 contained "pollutants" as defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).
48. The discharges described in Paragraphs 45 through 47 are not agricultural stormwater discharges, because Respondents had not applied manure and process wastewater in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of nutrients in the manure or process wastewater.
49. The Iroquois River is a traditionally navigable water and a "navigable water" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
50. The discharges described in Paragraphs 45 through 47 are each point source discharges subject to NPDES permit requirements, pursuant to 40 C.F.R. § 122.23(e).
51. Respondents are each a person who discharged pollutants from point sources into navigable waters, without a permit authorizing such discharges under Section 402 of the CWA, 33 U.S.C. § 1342. Accordingly, each instance in which Respondents discharged pollutants to navigable waters without a permit authorizing such discharges is a violation of Section 301 of the CWA, 33 U.S.C. § 1311.

V. ORDER ON CONSENT

52. Based on the foregoing findings and the authority vested in the undersigned Director, Water Division, it is hereby ordered and agreed to in accordance with Section 309(a) of the CWA, 33 U.S.C. § 1319(a), that Respondents comply with the following actions:
 - a. Upon the Effective Date of this Order, Respondents shall immediately cease all land application of manure or process wastewater except in accordance with the nutrient management plan enclosed as Attachment 2 to this Order (the "NMP").
 - b. Upon the Effective Date of this Order, Respondents shall ensure that no third party applies manure or process wastewater to the Land Application Area except in accordance with the NMP.

- c. Upon the Effective Date of this Order, Respondents shall comply in all other respects with the NMP.

VI. DOCUMENTATION AND SUBMISSIONS

53. Respondents must submit a status report to EPA for calendar year 2019 and each succeeding calendar year within 45 days of the end of each calendar-year (*i.e.*, by February 15), until this Order is terminated. At a minimum, the status report shall include the following information pertaining to that calendar year:
- a. The number and type of animals located at the Facility;
 - b. The estimated amount of total manure and process wastewater generated by the CAFO;
 - c. Records of the date, time, and estimated volume of any overflow, as defined by 327 IAC 15-16-4(5), or spill that occurred, as defined by 327 IAC 2-6.1-4(15);
 - d. All records required by the NMP, including but not limited to:
 - i. results of sampling required by Part 1.4 of the NMP;
 - ii. land application records required by Appendix A of the NMP;
 - iii. inspection records required by Part 1.6 of the NMP; and
 - iv. records documenting transfers of manure or process waste water to other persons;
 - e. Weekly records of the depth of the manure and process wastewater in storage structures as indicated by the capacity depth markers;
 - f. An assessment of the effectiveness of the NMP in preventing improper land application practices and/or discharges; and
 - g. A summary of all improper land application practices and/or discharges that occurred, and an analysis of the cause of each occurrence.
54. Respondents must report any unexpected, unintended, abnormal, or unapproved dumping, leakage, drainage, seepage, discharge or other loss of manure or process wastewater into waters of the United States that are of a quantity and type and that are present for a duration and in a location so as to damage waters of the United States within two hours of discovery to IDEM, in accordance with 327 IAC 2-6.1-7, and within 24 hours of discovery to EPA by the means described in Paragraph 55.
55. All reports, notifications, documentation, submissions, and other correspondence required to be submitted by this Order must be submitted to EPA electronically, to the extent possible. If

electronic submittal is not possible, the submissions must be made by certified mail (return receipt requested). Electronic submissions must be sent to the following addresses: r5weca@epa.gov, rogers.joan@epa.gov, and grubb.christopher@epa.gov. The subject line of all email correspondence must include the facility name, subject of the deliverable, and the docket number of this Order. All electronically-submitted materials must be in final and searchable format, such as Portable Document Format (PDF) with Optical Character Recognition (OCR) applied. Mailed submissions must be sent to the following addresses:

Attn: Joan Rogers, EPA Case Manager
Water Enforcement Compliance Assurance Branch (WC-15J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Attn: Christopher B. Grubb
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

56. EPA may modify the frequency of Respondents' reporting, for the purpose of documenting compliance with the NMP requirements. Should EPA require additional status reports, EPA will provide Respondents with at least 30 days from the date that Respondents receive EPA's request to submit the reports.
57. All reports, notifications, documentation, and submissions required by this Order must be signed by a duly authorized representative of Respondents as specified by 40 C.F.R. § 122.22(b) and (d) and must include the following statement:
- "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
58. Respondents may not withhold information based on a claim that it is confidential. However, pursuant to 40 C.F.R. Part 2, Subpart B, Respondents may assert a claim of business confidentiality regarding any portion of the information submitted in response to this Order. The manner of asserting such claims is specified in 40 C.F.R. § 2.203(b). Certain information related to effluent data (as defined in 40 C.F.R. § 2.302(a)(2)) and NPDES permit applications may not be entitled to confidential treatment. 40 C.F.R. § 122.7. Information

subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B. If Respondents do not assert a claim of business confidentiality when they submit the information, EPA may make the information available to the public without further notice. 40 C.F.R. § 2.203(c).

59. If Respondents find at any time after submitting information that any portion of that information is false or incorrect, Respondents must notify EPA immediately. Knowingly submitting false information to EPA may subject Respondents to criminal prosecution under Section 309(c) of the CWA, 33 U.S.C. § 1319(c), as well as 18 U.S.C. § 1001 and 1341.
60. Submissions required by this Order are considered submitted on the date they are sent electronically or on the date postmarked if sent by U.S. mail.
61. Upon EPA approval, submissions by Respondents pursuant to Paragraphs 74 and 76 are incorporated and enforceable as part of this Order. In case of inconsistency between any submission by Respondents and this document and its subsequent modifications, this document and its subsequent modifications shall control.
62. EPA may use any information submitted in response to this Order in support of an administrative, civil, or criminal action against Respondents.
63. The information required to be submitted pursuant to this Order is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*

VII. GENERAL PROVISIONS

64. Respondents have had the opportunity to confer with and submit information to EPA concerning the validity and provisions of this Order.
65. The terms of this Order are binding on Respondents and their assignees and successors. Respondents must give notice of this Order to any successors in interest prior to transferring ownership, and must simultaneously verify to EPA, at the address specified in Paragraph 55 that Respondents have given the notice.
66. The undersigned signatory for each party has the authority to bind each respective party to the terms and conditions of this Order.
67. Failure to comply with this Order may subject Respondents to penalties up to \$53,484 per day for each violation pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and 40 C.F.R. Part 19.
68. This Order does not affect Respondents' responsibility to comply with the CWA, its permit(s), and any other local, state, and federal laws and regulations.

69. This Order does not restrict EPA's authority to enforce any section of the CWA or its implementing regulations.
70. EPA and Respondents have entered into a Consent Agreement and Final Order ("CA/FO") that, upon approval by the Regional Judicial Officer, will resolve Respondents' liability for civil penalties for the violations cited in Section IV of this Order.
71. Except as expressly stated in Paragraph 70, EPA reserves all rights and remedies, legal and equitable, available to address any violation cited in this Order and any other violation of the CWA or of this Order. Neither issuance of this Order by EPA nor compliance with its terms precludes further enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, for the violations cited in this Order, for any other violations of the CWA or of this Order committed by Respondents.
72. The CWA includes provisions for administrative penalties, for civil injunctive relief and penalties, and for criminal penalties for violations of the CWA. Specifically, EPA may:
- a. assess civil administrative penalties under 33 U.S.C. § 1319(g) and 40 C.F.R. Part 19 of up to \$16,000 per day of violation up to a total of \$187,500, for violations of Section 301 of the CWA that occurred after December 6, 2013 through November 2, 2015 and up to \$21,393 per day of violation up to a total of \$267,415, for violations of Section 301 of the CWA that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2018.
 - b. seek civil injunctive relief and penalties for violations of the CWA under 33 U.S.C. § 1319(b) and civil judicial penalties for violations of this Order under 33 U.S.C. § 1319(d). In accordance with 40 C.F.R. Part 19, EPA may seek civil judicial penalties of up to \$37,500 per day of violation for violations that occurred after December 6, 2013 through November 2, 2015 and up to \$53,484 per day of violation for violations that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2018; and
 - c. seek criminal penalties, including fines and imprisonment, for negligent or knowing violations of the CWA under 33 U.S.C. § 1319(c).

VIII. EFFECTIVE DATE

73. This Order shall become effective upon signature by EPA below (the "Effective Date").

IX. MODIFICATION OF NMP

74. Respondents must obtain EPA approval before implementing any substantial modifications to the NMP. Examples of substantial modifications include, but are not limited to, changes in land application acreage covered under the NMP, changes in land application rates or timing

limitations, changes in manure storage procedures, changes in the type of manure spreading equipment used for land application, changes in manure or soil sampling and analysis procedures, decreases in the quantity of samples collected for manure or soil sampling and analysis, or changes in crop species. The NMP includes nitrogen application rates and estimated phosphorus removal rates for rye, alfalfa, corn silage after corn silage, and corn silage after alfalfa. Changing the NMP to grow a different or additional crop on a field during a season shall not be considered a substantial modification if Respondents are (1) growing rye, alfalfa, corn silage after corn silage, or corn silage after alfalfa, and; (2) using the respective nitrogen application rates and estimated phosphorus removal rates specified in the NMP. Substantial modifications also do not include abandoning plans to grow a crop at a particular time or location if the nutrient utilization rate assumed for that crop in the NMP is reduced accordingly, or increases in the quantity of samples collected for manure or soil sampling and analysis. Respondents shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may proceed with the requested modification unless EPA has provided Respondents with a written notification of disapproval and a written explanation of the technical basis for its disapproval within 45 days after submission.

75. No verbal advice, guidance, suggestion, or comment by EPA representatives regarding the NMP submitted by Respondents shall relieve Respondents of their obligation to obtain the written approval required by this Order, or to comply with all requirements of the NMP. EPA approvals or disapprovals of proposed NMP modifications will occur in the form of letters or similar formal documents, which may be transmitted to Respondents by email. However, the contents of emails themselves shall not be considered written approval or disapproval.

X. MODIFICATION OF ORDER

76. If Respondents seek permission to modify any requirement of this Order, Respondents shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested modification until the modification has been memorialized in a written agreement signed by the Parties.

IX. FINAL REPORT AND TERMINATION OF THIS ORDER

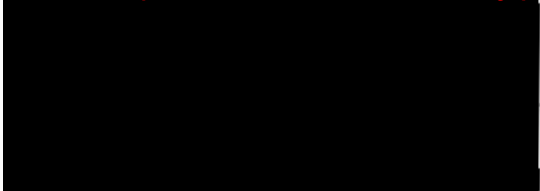
77. EPA may terminate this Order at any time by written notice to Respondents.
78. After Respondents have maintained continuous satisfactory compliance with this Order for a period of five years, Respondents must send EPA a written final report and certification of completion, describing all actions taken to comply with all requirements of this Order. Respondents must follow the procedures set forth at Section VI of this Order.
79. After receipt and review of Respondents' final report and certification of completion submitted pursuant to Paragraph 78, EPA will notify Respondents whether they have satisfied all requirements of this Order. If EPA concludes that Respondents have failed to

satisfy the requirements of this Order, EPA may require further actions as set forth under this Order or it may pursue administrative or civil judicial actions.

IT IS SO AGREED AND ORDERED:

FOR RESPONDENT, WINDY RIDGE DAIRY, LLC:

Ex. 6 (Personal Privacy)

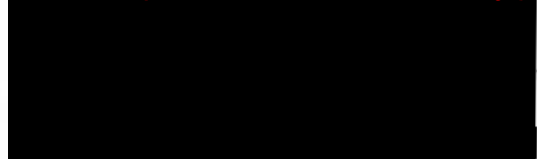


4-5-19

Date

FOR RESPONDENT, T&M LIMITED PARTNERSHIP:

Ex. 6 (Personal Privacy)



4-5-2019

Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Joan Tanaka
Joan Tanaka, Acting Director

Water Division
U.S. EPA Region 5

4.8.19
Date